

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

FILED
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ADMINISTRATIVE HEARING
COMMISSION

**DIRECTOR OF DEPARTMENT OF
INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION**)

Petitioner,)

vs.)

**KEVIN W. LOUDERBACK &
PREMIER FINANCIAL SERVICES,**)

Respondents.)

Case No.: 07-1376 DI

PETITIONER'S BRIEF

Pursuant to the Commission's Order dated April 3, 2009, the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration ("Director"), through counsel, hereby submits the following Proposed Findings of Fact, Conclusions of Law and Legal Brief.

PROPOSED FINDINGS OF FACT

1. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions, and Professional Registration whose duties include the regulation, supervision, and discipline of licensed insurance producers and business entity insurance producers pursuant to Chapters 374 and 375, RSMo.
2. Respondent Louderback was originally licensed by the Department on December 1, 2004, license number PR339355, and that license expired on December 2, 2008. *See Petitioner's Exhibit 1.*

3. Respondent Premier Financial Services was originally licensed by the Department on December 30, 2004, license number AG8019240, and that license expired on December 31, 2008. *See Petitioner's Exhibit 2.*
4. Respondent Louderback is an owner of Respondent Premier Financial Services. *See Petitioner's Exhibit 4 and Transcript p. 9.*
5. On or about August 14, 2000, in the Circuit Court of Barry County, Missouri, Case Number 0299-000168F, Respondent Louderback pleaded guilty to Misdemeanor Passing Bad Check Less Than \$150.00. *See Petitioner's Exhibit 6.*
6. On or about June 16, 2004, in the Circuit Court of Greene County, Missouri, Case Number 302CF8829, Respondent Louderback pleaded guilty to the Class C Felony of Stealing. *See Petitioner's Exhibit 7.*
7. On or about November 10, 2004, Respondent Louderback submitted an application for an insurance producer license to the Department of Insurance, Financial Institutions, and Professional Registration ("Department"). *See Petitioner's Exhibit 3.*
8. Question 1 on page 3 of Respondent Louderback's 2004 insurance producer license application asks:

Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld? 'Crime' includes a misdemeanor, felony or military offense. You may exclude misdemeanor traffic citations and juvenile offenses. 'Convicted' includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

Respondent Louderback answered this question "No." *See Petitioner's Exhibit 3.*

9. On or about December 13, 2004, Respondent Premier Financial Services submitted an application for a business entity insurance producer license to the Department. *See Petitioner's Exhibit 4.*

10. Question 1 on page 4 of Respondent Premier Financial Services' 2004 business entity insurance producer license application asks:

Has the business entity or any owner, partner, officer or director ever been convicted of, or is the business entity or any owner, partner, officer or director currently charged with, committing a crime, whether or not adjudication was withheld? 'Crime' includes a misdemeanor, felony or military offense. You may exclude misdemeanor traffic citations and juvenile offenses. 'Convicted' includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

Respondent Premier Financial Services answered this question "No." *See Petitioner's Exhibit 4.*

11. On page 5 of Respondent Premier Financial Services' 2004 business entity insurance producer license application, it states that the application "[m]ust be signed by an officer, director, principal or partner of the business entity." Following this statement is the signature block, in which Respondent Louderback signed the application with the title of owner. *See Petitioner's Exhibit 4.*

12. On May 1, 2007, Special Investigator Diana Brady personally served Respondent Louderback a subpoena issued by the Director, ordering Respondent Louderback to appear before the Director on May 23, 2007.

13. Respondent Louderback failed to appear before the Director on May 23, 2007 and the conference was rescheduled to June 5, 2007. *See Transcript p. 11.*

14. Respondent Louderback failed to appear before the Director on June 5, 2007. *See Transcript p. 11.*

15. On or about July 25, 2007, Respondent Louderback appeared at a preliminary hearing in the Circuit Court of Greene County, Missouri, for a criminal case (Case No. 307CF1875) alleging Respondent Louderback committed the felony of identity theft. *See Petitioner's Exhibit 7.*

16. Respondent Louderback failed to report to the Director the prosecution of identity theft within thirty (30) days of July 25, 2007. *See Transcript p. 14.*

17. Respondent Premier Financial Services did not report Respondent Louderback's criminal prosecution to the Director and took no corrective action. *See Transcript p. 14.*

18. On or about December 22, 2008, Respondent Louderback was found guilty of the Class A Misdemeanor of Identity Theft in the Circuit Court of Greene County, Missouri, Case Number 31307CF1875 and on March 20, 2009 was sentenced to one (1) year in the Greene County Jail. *See Exhibits 8 and 9.*

CONCLUSIONS OF LAW

19. The Administrative Hearing Commission has jurisdiction over this case pursuant to § 621.045, RSMo (Supp. 2008).

20. Section 375.141, RSMo (Supp. 2008) provides, in part:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

...

(3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;

...

(6) Having been convicted of a felony or crime involving moral turpitude;

...

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

...

3. The license of a business entity licensed as an insurance producer may be suspended, revoked, renewal refused or an application may be refused if the director finds that a violation by an individual insurance producer was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity an the violation was neither reported to the director nor corrective action taken.

...

7. Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

21. "Moral turpitude" has been defined as "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything 'done contrary to justice, honesty, modesty, and good morals'." *In re Frick*, 694 S.W.2d 473, 479 (Mo. 1985).

LEGAL BRIEF

Sufficient legal and factual grounds exist for disciplining Respondents' insurance producer licenses. Neither Respondent disclosed Respondent Louderback's criminal history on their applications. Respondent Louderback failed to report to the Department

his criminal prosecution when required to do so and Respondent Premier Financial Services failed to report to the Department Respondent Louderback's failure to report his criminal prosecution. Additionally, Respondent Louderback was convicted of a felony and a crime of moral turpitude and failed to obey a subpoena of the director. These actions by Respondents demonstrate fraudulent and dishonest practices.

A. Respondent Louderback's "No" answer to question 1 on page 3 of his 2004 insurance producer license application is cause to discipline his insurance producer license.

Respondent Louderback's answered "No" to the question "Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?" on his 2004 insurance producer application even though on or about August 14, 2000, he pleaded guilty to Misdemeanor Passing Bad Check Less Than \$150.00 and on or about June 16, 2004, he pleaded guilty to the Class C Felony of Stealing. *See Petitioner's Exhibits 3, 6, and 7.*

Respondent Louderback's "No" answer to this question is cause to discipline his insurance producer license under § 375.141.1(1), RSMo (Supp. 2008) because such representation was materially incorrect, misleading, and untrue and under § 375.141.1(3), RSMo (Supp. 2008), because with the answer of "No" Respondent Louderback obtained a license through material misrepresentation or fraud.

B. Respondent Premier Financial Services' "No" answer to question 1 on page 4 of its 2004 business entity insurance producer license application is cause to discipline its business entity insurance producer license.

Respondent Premier Financial Services answered "No" to the question "Has the business entity or any owner, partner, officer or director ever been convicted of, or is the business entity or any owner, partner, officer or director currently charged with,

committing a crime, whether or not adjudication was withheld?” on its 2004 business entity insurance producer license application even though its owner, Respondent Louderback, on or about August 14, 2000, pleaded guilty to Misdemeanor Passing Back Check Less Than \$150.00 and on or about June 16, 2004, pleaded guilty to the Class C Felony of Stealing. *See Petitioner’s Exhibits 4, 6, and 7.*

Respondent Premier Financial Services’ “No” answer to this question is cause to discipline its business entity insurance producer license under § 375.141.1(1), RSMo (Supp. 2008) because such representation was materially incorrect, misleading, and untrue and under § 375.141.1(3), RSMo (Supp. 2008), because with the answer of “No” Respondent Premier Financial Services obtained a license through material misrepresentation or fraud.

C. Respondent Louderback’s failure to report his criminal prosecution for identity theft within thirty (30) days of the initial pretrial hearing date is cause to discipline Respondent Louderback’s insurance producer license.

On or about July 25, 2007, Respondent Louderback appeared at a preliminary hearing in the Circuit Court of Greene County, Missouri, for a criminal case (Case Number 307CF1875) alleging that Respondent Louderback committed the felony of identity theft. *See Petitioner’s Exhibit 7.* Respondent Louderback is required by § 375.141.7, RSMo (Supp. 2008), to report this prosecution within thirty (30) days to the Director because the prosecution alleged a felony and identity theft is a crime involving moral turpitude. Crimes involving fraud, false pretense, and theft are crimes of moral turpitude. *In Re Frick*, 694 S.W.2d 473, 479 (Mo. 1985). Because Respondent Louderback violated § 375.141.7, RSMo (Supp. 2008), his insurance producer license is subject to discipline under § 375.141.1(2), RSMo (Supp. 2008).

D. Respondent Louderback failure to obey a subpoena issued by the Director is cause to discipline Respondent Louderback's insurance producer license.

On May 1, 2007, Special Investigator Diana Brady personally served Respondent Louderback a subpoena issued by the Director ordering Respondent Louderback to appear before the Director on May 23, 2007. *See Petitioner's Exhibit 5.* Respondent Louderback failed to appear before the Director on May 23, 2007 and the conference was rescheduled for June 5, 2007. *See Transcript p. 10.* Respondent Louderback failed to appear before the Director on June 5, 2007. *See Transcript p. 11.* Respondent Louderback's failure to obey a subpoena issued by the Director is cause to discipline his insurance producer license under § 374.210.2, RSMo (Supp. 2008).

E. Respondent Louderback's conviction of a felony and a crime involving moral turpitude is cause to discipline his insurance producer license.

On or about June 16, 2004 Respondent Louderback was convicted of the Class C Felony of Stealing in violation of § 570.030, RSMo, in the Circuit Court of Greene County, Missouri, Case Number 302CF8829. *See Petitioner's Exhibit 7.* On or about December 22, 2008, Respondent Louderback was found guilty of the Class A Misdemeanor of Identity Theft, in the Circuit Court of Greene County, Missouri, Case Number 31307CF1875. *See Petitioner's Exhibit 8.* On or about March 20, 2009, Respondent Louderback was sentenced to one year in the Greene County Jail. *See Petitioner's Exhibit 9.* Crimes involving theft and fraud are crimes involving moral turpitude. *In Re Frick*, 694 S.W.2d 473, 479 (Mo. 1985). Thus, the Class C Felony of Stealing is both a felony and a crime of moral turpitude and the Misdemeanor of Identity

Theft is a crime involving moral turpitude. Both are cause to discipline Respondent's insurance producer license under § 375.141.1(6), RSMo (Supp. 2008).


F. Respondents' actions described demonstrated above are fraudulent and dishonest practices and cause to discipline their insurance producer licenses.

Respondent Louderback failed to disclose his criminal history on his insurance producer license application and on Respondent Premier Financial Services' business entity insurance producer license application, was convicted of Felony Stealing, and was convicted of Misdemeanor Identity Theft. *See Petitioner's Exhibits 3, 4, 7, 8, and 9.* These actions by Respondent Louderback demonstrate fraudulent and dishonest practices, which is cause to discipline Respondent Louderback's insurance producer license under § 375.141.1(8), RSMo (Supp. 2008).

Respondent Premier Financial Services' failure to disclose Respondent Louderback's criminal history on its business entity insurance producer application or failure to report Respondent Louderback's failure to report his Identity Theft prosecution to the director. *See Petitioner's Exhibit 4 and Transcript p. 14.* These actions demonstrate fraudulent and dishonest practices, which is cause to discipline Respondent Premier Financial Services' business entity insurance producer license under § 375.141.7, RSMo (Supp. 2008).

WHEREFORE, Petitioner respectfully requests this Commission issue findings of facts and conclusions of law finding cause to discipline Respondent Louderback's insurance producer license and Respondent Premier Financial Services' business entity insurance producer license.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing Petitioner's Brief was mailed first class, with sufficient postage attached, via the United States Postal Service on the 28th day of Apr. 1, 2009, to:

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